

MINUTES OF APRIL 25, 2000
PARAMEDIC TASK FORCE MEETING
Camp Nimitz/Naval Training Center
San Diego, CA

MEMBERS	EMSA STAFF	ALTERNATES	MEMBERS	ALTERNATES
<u>PRESENT</u>	<u>PRESENT</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>ABSENT</u>
Debbie Becker	Richard McSherry	Michael Harris	Dean Anderson	Jim Allen
Bill Cody	Nancy Steiner	Nancy Justin	Bill Bower	Linda Anderson
Carol Gunter	Miranda Swanson	Dick Mayberry	Jim Holbrook	Dave Magnino
Kevin White	Connie Telford	Bruce Haynes	Sabina Imrie	Mike Metro
	Richard Watson	(sitting in for	Bill Koenig	David Nevins
		Frank Pratt and	Marshall Morton	Frank Pratt
		Sam Stratton)	Jan Ogar	
			Tony Pallitto	
			Kevin Rittger	
			Kathy Sher	
			Sam Stratton	

I Review and Approval of March 29, 2000 Meeting Minutes

The minutes were approved with no changes.

II Setting of the Agenda

There were no changes to the Agenda.

III Draft Model Disciplinary Guidelines

Kevin White commented to the Paramedic Task Force (PTF) members that although the Model Disciplinary Orders (MDOs) have been voted on and approved (other than minor grammatical and clarification changes), there are still some issues that are of concern to the California Professional Firefighters (CPF) organization that he represents. He also requested to have the comments and the positions he has submitted for his organization on record. The comments that were sent to the PTF members are included with these minutes.

-Alternative Dispute Resolution

At the request of the PTF Richard McSherry contacted the Attorney General's (AG's) Office and requested their opinion of the Alternative Dispute Resolution as an alternate means to the administrative hearing process. The AG's Office gave him a brief background of the Alternative Dispute Resolution. They stated that the Alternative Dispute Resolution came about at the request of the Department of Consumer Affairs. The AG's Office also commented that to their knowledge no other licensing agency uses it. They also said that with an arbitrator certain appeal rights may be lost, and that they saw no real benefit of utilizing the process to either the individual or agency.

Richard McSherry explained that the EMSA hearing process is usually very timely, and that if an arbitrator were used it may take longer than the current process just to arrange for an arbitrator that everyone would agree to use. It might also require some statutory change because currently the director of EMSA by statute makes the final decision on cases.

It was decided that the Alternative Dispute Resolutions will not be added to the MDO's at this time, but is an option under the Administrative Procedures Act.

-Review of Revised MDOs

Richard McSherry reviewed the changes that were made to the MDOs based on the last meeting. Some minor changes from this meeting included:

- The word "Language" will be added to the phrase "Model Disciplinary Orders". The probation orders are to be rearranged by group (standard or optional) and renumbered.

- The PTF voted to add language to the MDO, Obey All Related Laws, stating *EMSA shall determine the applicability of the offense(s) as to whether the respondent violated any federal, state and local laws, statutes, regulations, written policies, protocols and rules governing the practice of medical care as a paramedic.*

- Tolling for Out-of-State Practice or Residence was changed to Functioning as a Paramedic.

Other specific changes will be included in the next revision of the MDOs for the next meeting.

-Review Board Proposal

The PTF reviewed the Review Board Proposal. Some minor changes were made for clarification, which will be included in the next revision.

There was some discussion regarding the criteria for the Board Members that they must not have had any discipline brought against them by their licensing/certification board. It was moved that the criteria be changed to read that the Board Member must not have had any discipline brought against them within the past 5 years. The PTF voted to oppose changing the criteria regarding discipline at this time. Richard McSherry will research the Medical Board criteria regarding this issue.

There was also some discussion regarding the criteria that the educator member of the Review Board have 5 or more years as an EMS educator in a primary paramedic training program. The PTF decided that five years experience in EMS with at least two years as an EMS educator in a primary paramedic training program would be acceptable.

-New Section or Regulation - Proposed Standards for Denial/Revocation of a Paramedic License

Richard McSherry reviewed the changes that were made from the previous meeting. There was some discussion whether subsection (g) belongs in the proposed Section or Regulation.

-Bill of Rights for Peace Officers

Kevin White forwarded a link to the members of the PTF of the Bill of Rights for Firefighters (AB1411) which is pending legislation. He reported that it was originally sponsored by CSFA and co-sponsored by CPF, and that it essentially mirrors the Peace Officer's Bill of Rights which guarantees due process in disciplinary issues.

-Sharing of Information During an Investigation

This item was deferred until the next meeting.

IV Statement of Scope of Practice

Nancy Steiner reported that at this time EMDAC does not support recommendation number one, and that EMDAC would like to meet with members of the PTF to discuss this issue. She asked if anyone from the PTF would attend an EMDAC meeting to be a spokesperson for the PTF. There were some recommendations as to whom should attend, but it was not decided at this meeting.

She also reported that the matrix of comments is being worked on and that she will have it for the next meeting.

Bruce Haynes reported on some of the discussion from EMDAC which included:

- There is an acknowledgment that this is an issue that needs to be addressed, and that they realize that this is a serious issue.

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- EMDAC has asked the bay area Medical Directors to start meeting regarding this issue and the bay area Medical Directors are actively talking about standard scope of practice and standard protocols for their region.
- EMDAC doesn't want to see a regulatory roadblock between medics and providing good patient care.

V Adjournment

The meeting was adjourned at 2:00 p.m. The next meeting will be May 30, 2000 at the Alameda County EMS Agency. Nancy Steiner will e-mail the PTF members information regarding the date and location for the June meeting.

At the next meeting the PTF will begin discussion on continuing education. Also, discussion on future tasks for the PTF will be agendaized.

Attachment to the Minutes of the April 25, 2000 Paramedic Task Force Meeting

Submitted by: Kevin White
EMS/Health and Safety Director
California Professional Firefighters

To the Members of the Paramedic Task Force --

In his e-mail dated April 14, Rich said: "Those in attendance at the March meeting voted overwhelmingly that the MDO is finished except as follows:" I am please that he stated that was a vote and not "consensus" or "unanimity in the group." If it is the will of the group to move these orders on through, that will happen. However, there are still some issues that, for the California Professional Firefighters, are not resolved. I want a set of fair and equitable Model Disciplinary Orders to guide the EMSA and Administrative Law Judges to assure that the accused paramedic will receive a fair discipline and conditions of probation that will allow the individual to return to work as a fully licensed paramedic.

First and foremost, it should be acknowledged that these MDOs apply to an administrative process, not civil violations or criminal acts. If the EMSA suspects there may be a civil or criminal violation the appropriate authorities should be notified. The jurisdiction of the EMSA is only administrative. That is another reason that I recommend the EMSA look into including the "Alternative Dispute Resolution" process (<http://www.oah.dgs.ca.gov/>). Maybe by the strict interpretation of the statute and regulations, it may not have to apply, but it could be a fair mechanism to use.

In regards to the template used for the MDOs, that template was the Board of Registered Nurses "Recommended Guidelines for Disciplinary Orders and Conditions of Probation." Although this pattern was a reasonable place to begin, there are certain things in the MDOs that have been forced into this mold. This was not appropriate in some cases. The BRN (established by statue in the Business and Professions, not the Health and Safety Code, under the Department of Consumer Affairs, not the Department of Health Services) is a board of professional political appointees (including peers) with the specific responsibility of monitoring the licenses and licensing process of nurses statewide. The Division of Investigations of the Department of Consumer Affairs performs investigations of "consumer complaints" against nurses. The BRN has the legislated mandate of monitoring nurses through the BRN discipline/diversion program. Beyond the licensing oversight, the BRN approves the RN CE, regulations regarding nurse practice.

That is not the case with paramedics. Paramedics (established by the Health and Safety Code under the Department of Health Services) are licensed and investigated by the licensing agency with no oversight in the process by paramedics. Continuing education is approved by any one of a number of LEMSAs or the state EMSA. Individual paramedics do have the right to input through the regulatory process but there is no Board of Licensed Paramedics.

There is nowhere in this document that acknowledges the employment and accreditation requirements placed on paramedics. It is important that this be recognized. It is through the relationships of the employer, the LEMSAs and the EMSA that the conditions of probation will be met. The protocols approved by the local medical director and the employer's management resources will be key to the success of an individual on probation.

Certain MDOs do not have unanimous or even group agreement. There are areas that I have not and cannot, for the interest of the group I represent, agree to.

MDO 9. Biological Fluid Testing:

There is confusion in the rational of the sentences “EMSA or its designee has the sole discretion to determine when and where such testing will take place. The testing will be at respondent’s expense.” This leaves open a large expense on the individual. The EMSA should not be concerned about who pays for it when the intent is that the EMSA won’t have to pay for it. The way it is written the EMSA can dictate where the individual will go without consideration to the ability of the individual to pay. That could be legally challenged. “The testing at the respondent’s expense” implies that as a condition of probation, there can be no other party or mechanism to achieve this condition of probation.

If the individual is employed (as is required for ALL paramedics to complete conditions of probation, see MDO 28) the EMSA should have no objection allowing the employer’s employee assistance program or provisions for testing of the individual used to for this condition of probation. It should be rare case when an employer does not have the arrangements for the random testing of their employees. The EMSA should coordinate and work with the employer to use those resources that are already arranged. The restrictive language, literally taken at the meaning of the words, prevents this.

There is the same concern in respect to MOD 16. Psychiatric/Medical Evaluation. The EMSA will approve only certain professionals to do the evaluation, but “the cost of any such evaluation shall be the sole responsibility of the respondent.”

MDO 11. Community Services – Free Service:

For individuals who have to maintain their license as a condition of employment, this condition of probation could present some real complications in order to comply with FLSA regulations. Even if the requirement is mandated by an outside influence (i.e., EMSA) the employer may be required to pay for that over which they have no control. Then it is no longer a “free service” and not applicable toward fulfilling the conditions of probation. I am surprised that the representatives of management groups aren’t concerned about this issue.

In several attempts to get justification and substantive relevance to possible infractions of Health and Safety Code §1798.200, the explanations have been weak. One comment that was repeated was (and I paraphrase) “This leaves the possibility open to use it.” This explanation is without relevance and unacceptable to the CPF.

MDO 13. Ethical Practice of EMS and MDO 17. Stress/Anger Management:

These areas remain undefined in educational goals and objectives. The other MDOs have some objective evaluation to them. The ability to measure and evaluate an individual’s change in behavior is lacking in this order.

The attempts to address my stated concerns have lacked relevance to the goals of discipline to an individual for violations of §1798.200. I understand the circumstances under which this model may be applied. The goal is still unstated or how to evaluate the individual who has been mandated this condition of probation.

MDO 20. Completion of Probation:

This order appropriately states that upon completion of probation the paramedic license will be fully restored. However, nowhere in the document does it state what it takes to complete probation. Some may think it implied. However, with the specificity of the document to this point, the MDO should include a statement that will describe the probationary period such as "The respondent/accused shall complete all of the requirements of probation as detailed in writing and agreed to in the negotiated settlement or by the determination of the Administrative Law Judge / Director of the EMSA in accordance with these Model Disciplinary Orders. Records of this probation will be retained for a period of _____ days/weeks/months/years by the EMSA. At that time, all records will be purged from EMSA files."

Without this kind of statement, the records may be maintained indefinitely and could be used against the individual at a later time for an unrelated incident.

With all of that said, I still have questions on the EMSA's process of the investigation of complaints and application of the MDOs. These questions are asked because there are no policies and procedures that let individual paramedics know what will or could happen in the event an accusation or complaint is filed against them.

1. What is the EMSA's policy on including the employee's chosen representative in the investigation and determining the conditions of probation? Most of the individuals who will be going through this process will be unfamiliar with it. Those who work in the administrative process and investigate regularly can easily overwhelm them. The individual must be freely allowed representation and counsel throughout the entire investigation and settlement negotiation.

2. What are the guidelines that EMSA gives the investigators? If there are none, those guidelines should be developed and the investigators trained prior to implementation of the MDOs. It all goes together in the fair and equitable application of investigation and appropriate discipline.

These guidelines should be published and open for public knowledge, for employers, LEMSAs, labor organizations and individuals. This could be done in similar fashion to the Department of Industrial Relations and the Cal/OSHA inspection policies (<http://www.dir.ca.gov/samples/search/querynpn.htm>)

3. What are the processes that the EMSA goes through to assure that the accusation/complaint is valid and not frivolous or arbitrary?

Investigating the complainant and assuring the complaint is valid must take priority over investigating the accused without cause.

4. Page 1 of the MDOs has the statement "The EMSA shall use this document as a standard in settling disciplinary matters when the paramedic wishes to resolve the allegations through a negotiated settlement." Who in the EMSA negotiates any settlement? This should not involve the investigator, other than presenting his/her findings. With whom will the employee and the employee's representative deal? Is this going to be directly with the EMSA Director, who has the ultimate say in the outcome of any action?

I respectfully submit these concerns to the Task Force.

Kevin White

California Professional Firefighters

EMS / Health and Safety Director

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